



Joseph P. Bort MetroCenter  
101 Eighth Street  
Oakland, CA 94607-4700  
TEL 510.817.5700  
TDD/TTY 510.817.5769  
FAX 510.817.7848  
EMAIL info@mtc.ca.gov  
WFB www.mtc.ca.gov

## *Memorandum*

TO: Bay Area Headquarters Authority

DATE: July 18, 2012

FR: Deputy Executive Director

W.I. 9130

RE: 390 Main Street Status Report – July 2012

### 1. Architectural and Engineering Services Update

At the July 11 Special Joint BAHA, Bay Area Air Quality Management District (BAAQMD) and Association of Bay Area Governments (ABAG) meeting, Perkins + Will (P+W) presented conceptual design plans for renovation of 390 Main Street for information and feedback. Staff expects to present an associated budget for BAHA approval at the September 26, 2012 meeting.

During the public comment period, Jim Chappell, from MJM Management Group, and a member of the Rincon Hill Community Benefit District Steering Committee, addressed the board. Mr. Chappell requested that BAHA consider completing a survey of property owners' level of interest in the creation of a Community Benefit District (CBD) to improve the Rincon and Transbay neighborhoods. The CBD would also focus on measures to deter crime in the neighborhood. Staff is currently reviewing neighborhood information and the merits of the CBD and will present our findings at the BAHA meeting. A copy of the survey is included as Attachment A.

### 2. Construction Update

In June, BAHA, P+W, and McCarthy Building Companies, Inc., completed a value engineering (VE) and scope reduction session for the schematic design. One idea that was accepted and presented in the July 11 presentation to BAHA was the reduction of the atrium from eight stories to three. The Commissioners requested that staff reevaluate how this idea would affect the future use of space by agency tenants, as well as the current value of daylight to non-agency tenants.

One unresolved VE item is an alternative seismic retrofit scheme. The design developed by the P+W team and presented to BAHA at the July 11 meeting included the construction of multiple new concrete shear walls on new foundations. The Contractor sees risk in the extensive underground work. An alternate scheme is being developed that would limit underground work, and staff expects to have a scheme selection by the beginning of August that can be presented to BAHA in September.

In the July 11 meeting, Commissioner Cortese requested that staff create a change order mitigation procedure that would require the Contractor, Architect, and BAHA to look for value engineering options when faced with unanticipated changes to the work during construction, such as differing site conditions. Staff will develop such a protocol. See Attachment B for detail on how contingency will be used during construction under the construction contract provisions.

The contractor has scheduled exploratory work with the existing tenant for the end of July, including hazardous materials testing, tracing the utilities related to the existing tenant, and performing tests to the building structure to understand the building's ability to transmit noise and vibrations.

The project team is tracking several items that may cause delay to the completion of the project. These include:

- a. The project team has developed a program around four agencies (MTC, BAAQMD, Bay Conservation and Development Commission (BCDC), and ABAG, but must revise the design to remove BCDC from the program, as further described in Section 4 below. Staff will not know ABAG's final status until its board discusses the topic in September 2012.
- b. In June, staff noted the San Francisco Department of Building Inspection (DBI) has seen a recent uptick of projects. Projects are experiencing longer plan check review durations, which could impact the project timeline by several months. Staff met with DBI in early July to introduce the project. At the meeting, DBI said the uptick would affect reviews for the project.
- c. Should the alternate structural design that is being developed be the preferred concept, the team will need up to four weeks to reconcile the current design with the new retrofit scheme. Since the alternate scheme would require less foundation work, staff thinks this time would be made up in construction.
- d. To date, the design has assumed that Western Labs, the existing tenant on the top floor, would relocate prior to the start of construction. The schedule has not included the time to work while the existing tenant remains in operation on the premises. The schedule and cost estimate are being revised with the new assumption that the Western Labs will not have relocated until July 2013 at the earliest.

### 3. Western Labs

Staff will be meeting with P+W, the Contractor, the Department of General Services (GSA) and Western Labs staff to develop work-around options since the assumption is now that they will still be in the building during the construction period.

### 4. Regional Partner Update

The Governor's office denied BCDC's request for an exemption to Executive Order B-17-2 that requires state agencies to locate into existing and available state-owned properties. However, at BCDC's request, BAHA will provide more detailed information to the State regarding the potential savings that will be derived if BCDC were to relocate to 390 Main Street.

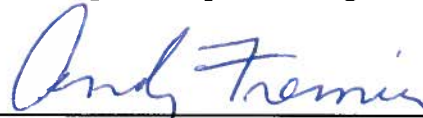
Staff continues to work with ABAG on a strategy to co-locate at 390 Main Street. ABAG's Executive Board appointed a sub-committee to review information related to the relocation to 390 Main Street. The sub-committee will meet in September and report their findings to the Executive Board, who will make the final decision.

### 5. SB 1545 (Senator DeSaulnier)

SB 1545, as amended, did not receive sufficient affirmative votes in the Senate prior to their recess.

6. State Audit

In compliance with Government Code 54956.75 the BAHA General Counsel will review, in closed session, the draft Audit report by Bureau of State Audits, with BATA at its July 25 meeting. The Bureau of State Audits expects to release its public report on August 28, 2012.



---

Andrew B. Fremier

Attachments A and B



# RINCON & TRANSBAY SURVEY



Rincon Hill Community Benefit District Steering Committee  
c/o MJM Management Group  
275 Post Street, Fifth Floor  
San Francisco CA, 94108

# RINCON & TRANSBAY SURVEY

July 12, 2012

Dear Rincon and Transbay Neighbor:

The purpose of this letter and Survey is to gauge your interest in forming a Community Benefit District (CBD) in the Rincon and Transbay neighborhoods. A CBD is a public-private partnership formed by community stakeholders to improve the neighborhood. Empirical data show that CBD's stabilize and/or improve property values.

CBD's are funded and managed *by and for the property owners* of the neighborhood. The services provided are often similar to what the city government provides – but more, better or sometimes just different than the city's efforts. And while each building owner or Home Owners Association can maintain their own property in an exemplary fashion; they cannot maintain a neighbor's property without permission.

Here are some of the services typically provided by a CBD:

- special patrols to **reduce auto burglary**, petty street crime, and behavioral issues on the street
- park and open space maintenance, sidewalk sweeping, **instant graffiti removal**, sidewalk power washing, and litter pick-up
- **a consistent neighborhood voice at City Hall**, creating a strong neighborhood image that improves property values

## Why form a CBD now?

We have a unique opportunity: In 2011, the owners of nine large undeveloped properties, along with the City, formed the Rincon Hill Infrastructure Financing District (IFD). Once developed, these properties will generate \$15 million in property taxes.

The IFD will allow the **\$15 million to be invested *within* the Rincon district**, rather than being spent *citywide*, subject to the Supervisors' release of funds for each project.

**But there is one stipulation** – in order for the IFD to sell bonds and the neighborhood to access this capital, the City requires a *long-term source of maintenance and operations funding be put in place*. This is the impetus for forming a Community Benefit District in Rincon Hill now.

### Range of Assessments

The level of assessments will be based on what kinds and levels of services provided. While the total budget and assessments have not been determined, for the purposes of this survey, you may assume:

Building Use	Range of Assessments, depending on services to be provided, number of street frontages, office building size, etc.
Condominium Unit	\$75 - \$175 per year
2-Story Commercial building, 50' frontage, with retail or ground floor and offices on second floor	\$1,000 - \$2,000 per year
High-rise office building, with retail on ground floor	\$15,000 - \$25,000 per year

### What's next?

The formation process is governed by State and City law and requires a few significant steps, including, surveying property owners' level of interest, development and adoption of a complete multi-year services plan, ratification and establishment of the new CBD by the SF Board of Supervisors, appointing a board of directors and hiring an executive director.

**If the process is successful, the Rincon CBD will launch and begin services by Spring 2013.**

A group of neighbors have formed a Steering Committee to direct this effort. *Over the next several months we'd like to invite you to participate in this process.* Help us craft options for discussion and neighborhood-wide adoption-the boundaries, service plans and possible assessments. This survey is the first step to help us to decide interested in a CBD; and establish its boundaries and the services it would provide.

For more background information and details about the formation of a Rincon CBD, go to [www.rinconhillsf.org](http://www.rinconhillsf.org).

You can also take this Survey online at: <https://www.surveymonkey.com/s/RinconHillSurvey>

Or return it to us in the envelope provided by: July 30, 2012



Questions? Comments?

Jim Chappell at MJM Management, 415-285-0910 or [jchappell@mjmng.com](mailto:jchappell@mjmng.com).

Thank you for your participation.

Sincerely,



John Cornwell  
Resident, Portside  
Chair of Steering Committee

**Rincon Community Benefit District Steering Committee**

c/o MJM Management Group  
275 Post Street, Fifth Floor  
San Francisco CA, 94108



**Initial Survey of the Stakeholders in a Possible  
RINCON COMMUNITY BENEFIT DISTRICT (CBD)**

**SURVEY AREA:**

Generally, properties from Mission Street on the north to I-80/Bay Bridge/Bryant Street on the south; and from the Embarcadero/Spear Street on the east to Second Street on the west.

1. I am (check all that apply):

- |  |   |
|--|---|
| <input type="checkbox"/> renter of commercial space    | <input type="checkbox"/> renter of residential space  |
| <input type="checkbox"/> residential condominium owner | <input type="checkbox"/> commercial condominium owner |
| <input type="checkbox"/> commercial building owner     | <input type="checkbox"/> residential building owner   |
| <input type="checkbox"/> business owner of : _____     |   |
| <input type="checkbox"/> other: _____                  |   |

2. The address of my condominium or business within the survey area is:

\_\_\_\_\_

3. I have lived or conducted business here since: \_\_\_\_\_ (year)

**B) YOUR NEIGHBORHOOD**

CBDs in San Francisco have a variety of approaches to making their community safe. Some contract with *law enforcement*, either through the SF Police Department, or through a Security Service. Others have uniformed "Community Guides" to foster an environment of comfort and security by providing a friendly and safe presence throughout the area. Their role would be *deterrence not law enforcement*.

4. Should the CBD's funds be spent on special law enforcement services to provide consistent, daily coverage of the District and designated crime hot spots, focusing on such things as car boosting, car burglary, and petty street crime?

- ☐ Definitely      ☐ Somewhat      ☐ No      ☐ Not sure

5. Should the CBD's funds be spent on "Community Guides" to be a deterrent to misdemeanor crime?

- ☐ Definitely      ☐ Somewhat      ☐ No      ☐ Not sure

6. Are there specific places in your neighborhood where you think these kinds of services are especially needed?

\_\_\_\_\_

\_\_\_\_\_



7. Should the CBD's funds be spent on a higher level of maintenance services, e.g. sidewalk and gutter sweeping, miscellaneous litter pick-up, trashcan overflow maintenance, graffiti removal, and periodic steam cleaning of the sidewalks?

☐ Definitely ☐ Somewhat ☐ No ☐ Not sure

8. Are there any **specific places** in your neighborhood where you think these services **could improve**?

If so, describe location: \_\_\_\_\_

9. Should the CBD's funds be spent on:

9.1 Sidewalk and gutter sweeping:

☐ Definitely ☐ Somewhat ☐ No ☐ Not sure

9.2 Sidewalk steam cleaning:

☐ Definitely ☐ Somewhat ☐ No ☐ Not sure

9.3 An emergency dispatch number to address graffiti removal or trash can overflow?

☐ Definitely ☐ Somewhat ☐ No ☐ Not sure

10. Various plans the City has prepared recommend pedestrian and open space improvements in the Rincon and Transbay neighborhoods. Rincon Hill is eligible for capital funding through the Rincon Hill Infrastructure Financing District, subject to the Supervisor's release of funds for each project. However, City policy does not allow these capital funds to be expended until a source of funding for long-term maintenance and operations is identified (e.g., a Community Benefit District).

The Rincon Hill Streetscape Master Plan and the Transbay Transit Center District Plan call for sidewalk widening and bulb-outs, planting of street trees, widening the pedestrian space for amenities such as parklets, pocket parks, seating areas, community gardens, dog runs, public art, etc.

10.1 Should the CBD's funds be spent on maintenance of these pedestrian spaces throughout your neighborhood?

☐ Definitely ☐ Somewhat ☐ No ☐ Not sure

10.2 The Rincon Hill Area Plan suggests development of a Rincon Hill park on the south side of Harrison between the I-80 off-ramp and Beale. Should the CBD's funds be spent on maintenance/operations in Rincon Hill Park?

☐ Definitely ☐ Somewhat ☐ No ☐ Not sure

10.3 The City has purchased land for a park on Guy Place. Should the CBD's funds be spent on maintenance/operations for the Guy Place Park?

☐ Definitely ☐ Somewhat ☐ No ☐ Not sure

10.4 The City is preparing plans for a series of parks and plazas along the I-80 on and off-ramps along Essex/Oscar/Tehama streets known as Oscar Park. Should the CBD's funds be spent on maintenance/operations here?

☐ Definitely ☐ Somewhat ☐ No ☐ Not sure

10.5 The City is preparing plans for Transbay Park on the site of the temporary bus terminal. Should the CBD's funds be spent on maintenance/operations here?

☐ Definitely ☐ Somewhat ☐ No ☐ Not sure

10.6 The maintenance of Rincon Hill Dog Park at the corner of Beale and Bryant is organized by volunteers from Friends of the Rincon Hill Dog Park. Should the CBD's funds be spent on gatekeeping and maintenance in the Rincon Hill Dog Park?

☐ Definitely ☐ Somewhat ☐ No ☐ Not sure

10.7 The Embarcadero Boulevard and Rincon Park are currently high pedestrian use areas for residents in the neighborhood and others. Should the CBD's funds be spent on maintenance/operations on the waterside of the Embarcadero and around Rincon Park?

☐ Definitely ☐ Somewhat ☐ No ☐ Not sure

11. Some neighbors have concerns for pedestrian safety, high speeds, and back-ups along the approaches to the on-ramps and off-ramps of the Bay Bridge. CBDs can partner with the Municipal Transportation Agency to hire dedicated traffic control officers to help manage key intersections. Should the CBD's funds be spent on traffic control officers?

☐ Definitely ☐ Somewhat ☐ No ☐ Not sure

### C) PARTICIPATION

12. Would you be interested in participating on the Steering Committee to form the Rincon Hill Community Benefit District as we develop the plan over approximately six months?

☐ Yes ☐ No ☐ Not Sure, Need More Info

13. Are there any other comments you have? Special services you would like to see? Hot-spot problem areas? Or issues in the neighborhood you want us to know about?

---

---

---

Please fill out the following information. We need this information, **ESPECIALLY YOUR EMAIL**, to communicate with you during this Survey process.

Your Email: \_\_\_\_\_

Property Site Address:

\_\_\_\_\_

Property Owner's Name:

\_\_\_\_\_

(Please Print)

Authorized Representative's Name (if applicable):

\_\_\_\_\_

(Please Print)

Property Owner's Mailing Address (if different than physical address): City/State/Zip:

\_\_\_\_\_

Your Phone: \_\_\_\_\_ Property Owner Phone: \_\_\_\_\_

**Please return the completed survey by July 30, 2012 or fax to 415-477-2604**

**You can also take this Survey online at: <https://www.surveymonkey.com/s/RinconHillSurvey>**

Survey written and produced by  
MJM Management Group  
275 Post Street, San Francisco, CA 94108.  
415- 477-2600 Fax: 415- 477-2604



## Attachment B

The Construction Manager at Risk model shifts some risk of cost overruns due to changes to McCarthy. Should BAHA agree on a Guaranteed Maximum Price and enter into a construction contract with McCarthy, the construction contract language creates two contingencies: a BAHA contingency and a capped construction contingency.

The BAHA contingency is for BAHA-directed changes, design errors and omissions, and certain differing site conditions that could not have otherwise been determined prior to construction. The construction contingency is for design errors or omissions on portions of the project where design is deferred to the contractor, and for contractor's preconstruction errors, such as during constructability review. This contingency is set to a mutually agreed-upon cap during GMP negotiation, after which the contractor is responsible for such costs.

From Section 007000, Article 8.10, Construction Contingency:

*8.10.1 Construction Contingency: The Contractor and BAHA shall set a mutually agreed upon Construction Contingency within the Guaranteed Maximum Price.*

*8.10.2 The Contractor may, with BAHA approval, charge costs up to but not over the amount of the mutually agreed upon Construction Contingency for changes and direct construction costs that Subparagraph 6.2.5 deems "preventable" and/or otherwise not a basis to increase the Contract Sum, provided such costs meet one of the following criteria:*

*8.10.2.1 The costs were incurred as a consequence of errors or omissions in the plans and specifications of the designs prepared by the Contractor's Architect/Engineer, engaged by Contractor to prepare underlying designs, so long as such costs do not result from Contractor's gross negligence or willful misconduct.*

*8.10.2.2 The costs were incurred as a consequence of Contractor's errors or omissions in performing Contractor's Pre-Construction Phase or Construction Phase Services, so long as costs do not result from Contractor's gross negligence or willful misconduct.*

*8.10.2.3 Any of the above mentioned costs that exceed the amount of the Construction Contingency, however shall not be reimbursed.*

*The Contractor shall not include mark-up for overhead and profit on changes necessitated by such "preventable" causes. The Construction Contingency shall include material price and labor escalation.*

*8.10.3 Contractor may not charge against contingency the costs of rework of defective work. Contractor may, however, charge against contingency the costs of acceleration and other types of unforeseeable subcontractor cost overruns.*

*8.10.4 Upon Project completion, Contractor shall receive thirty percent (30%) of remaining unused portion of the Construction Contingency applicable to the Project, and all remaining unused portions shall revert to BAHA. Contract Sum shall be adjusted accordingly with the following exception:*

*8.10.4.1 Should the Construction Contingency exceed three percent (3%) of the*

*Direct Cost of the Work at the time of creation of the GMP, the Contractor shall not be eligible for shared savings for that portion of the Contract Contingency greater than 3% of the Direct Cost of the Work. The portion of the Contract Contingency greater than 3% shall be the last part of the Construction Contingency that is used for the Work.*

*8.10.5 Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor on account of costs properly charged against this Construction Contingency, and the Contract Sum will be correspondingly adjusted.*

*8.10.6 BAHA shall determine in its sole discretion which, if any, costs it will authorize to be paid from the Construction Contingency. If Contractor disagrees with any BAHA determination in this regard, Contractor may pursue a claim under Article 9.*

*8.11 With each monthly payment request, the Contractor shall submit an accounting of the Contractor's use of its contingency, along with documentation of BAHA's approval. This accounting shall be presented to BAHA as a draw against the Construction Contingency.*

#### *END OF ARTICLE*

From Section 007000, Article 6.2.5. Limitation of Change Orders During Construction and Use of Construction Contingency:

*6.2.5.1 Because of Contractor's preconstruction phase services under Section 011150, Contractor shall be charged with knowledge of all existing conditions, constructability and design coordination knowledge that Contractor either knows or should have known as a result of its services under Section 011150. This knowledge shall specifically include, but is not limited to, the knowledge of all above ground differing site conditions, constructability issues, site access, code compliance, security restrictions, restrictions due to continuing building operations, traffic, parking, and design errors or omissions reasonably known as a result of its preconstruction services. This list is included for purpose of illustration only, and is not exhaustive.*

*6.2.5.2 Contractor accepts fully the risk that Contract Documents, including plans and specifications, may not conform to existing conditions. Differing site conditions will be deemed known by Contractor if they were subject to visual observation in any manner or could reasonably be deduced by a diligent contractor or construction manager based on supplied information.*

*6.2.5.3 Where BAHA has engaged the A/E: For purposes of claims and/or change orders resulting from Owner's A/E's design errors and omissions, differing site conditions, difficult construction conditions, or other causes subject to Contractor's preconstruction services in Section 011150, Contractor shall not be entitled to a change in the Contract pricing or schedule for such occurrences, unless the cause results from errors in design and/or engineering calculations that could not have been reasonably discovered by a diligent contractor or construction manager notwithstanding its satisfactory performance of its work under 011150. Otherwise, such causes shall be deemed "preventable," and shall not form the basis for a change to the Contract pricing or schedule.*

*1. For example and solely for purposes of illustration, design errors in the form of conflicting details, uncoordinated drawings, or dimensions not fitting existing conditions or dimensions shown in other drawings, shall be deemed "preventable" and shall not be entitled to for a change to the Contract pricing or schedule.*



2. *For example and solely for purposes of illustration, design errors in the form of an error in the specification of specific equipment, materials or systems, errors in calculations, or architectural/engineering errors not preventable by a thorough constructability and design coordination review by a contractor or construction manager, shall be deemed “not preventable” and may form the basis for a change to the Contract pricing and/or schedule.*

6.2.5.4 *Where the Contractor has engaged the A/E: The same principles expressed above in 6.2.5.3 shall apply except that design errors in the form of an error in specification of specific equipment, materials or systems, errors in engineering calculations, or architectural/engineering errors, even if not preventable by a thorough constructability and design coordination review by a contractor or construction manager, shall nonetheless be deemed “preventable” and shall not form the basis for a change to the Contract pricing or schedule.*

6.2.5.5 *Notwithstanding that Contractor is not entitled to receive a change to the Contract pricing or schedule under this section for “preventable” causes, Contractor may be entitled to charge certain “preventable” costs to the Construction Contingency.*